

Date: 10/21/08


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PROPOSED ORDER

The Proposed Decision of the Administrative Law Judge in the captioned case having been considered in its entirety, it is **ORDERED** by the Commissioner of Financial Regulation (the "Commissioner") this 25th day of September, 2008 that the Proposed Decision shall be and hereby is adopted as a Proposed Order.

Pursuant to COMAR 09.01.03.09, Respondent has the right to file exceptions to the Proposed Order and present arguments to the Commissioner. Respondent has twenty (20) days from the postmark date of this Proposed Order to file exceptions with the Commissioner. COMAR 09.01.03.09A(1). The date of filing exceptions with the Commissioner is the date of personal delivery to the Commissioner or the postmark date on mailed exceptions. COMAR 09.01.03.09A(2).

Unless written exceptions are filed within the twenty (20)-day deadline noted above, this Order shall be deemed to be the final decision of the Commissioner.


Sarah Bloom Raskin
Commissioner of Financial Regulation

IN THE MATTER OF	*	BEFORE UNA M. PEREZ,
THE LEONARD GROUP, LLC., d/b/a	*	AN ADMINISTRATIVE LAW JUDGE
AXIOS FINANCIAL,	*	OF THE MARYLAND OFFICE OF
RESPONDENT	*	ADMINISTRATIVE HEARINGS
LICENSE NO: 06-15838	*	CFR CASE No: DFR-EU-2007-018
	*	OAH No.: DLR-CFR-76B-08-09672

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PROPOSED DECISION

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STATEMENT OF THE CASE

On January 24, 2008, the Commissioner of Financial Regulation (Commissioner or CFR) issued a Statement of Charges against the Respondent, alleging that the Respondent had failed to comply with the terms of a certain Settlement Agreement that the Respondent had entered into with the Commissioner on June 22, 2007. The Commissioner alleged that the Respondent had acted in bad faith and that the mortgage lending business of the Respondent was not conducted honestly, fairly, equitably and efficiently, all in violation of section 11-517(a)(5) of the Financial Institutions Article of the Annotated Code of Maryland.

I held a hearing on June 17, 2008 at the Office of Administrative Hearings, Hunt Valley, Maryland, on behalf of the CFR. Md. Code Ann., Fin. Inst. § 11-518 (2003). Matthew A.

Lawrence, Assistant Attorney General, represented the CFR. Neither the Respondent nor anyone authorized to represent it appeared.

Procedure in this case is governed by the provisions of the Administrative Procedure Act, the hearing regulations of the Department of Labor, Licensing and Regulation, and the Rules of Procedure of the Office of Administrative Hearings. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2004 & Supp. 2007); Code of Maryland Regulations (COMAR) 09.01.03; and COMAR 28.02.01.

ISSUE

The issues are whether the Respondent violated section 11-517(a)(5) of the Financial Institutions Article and if so, what is the appropriate sanction?

SUMMARY OF THE EVIDENCE

Exhibits

I admitted the following exhibits on behalf of the CFR:

- | | |
|-------------------|------------------------------------------------------------------------------------------------------------------------|
| Fin. Reg. Ex. # 1 | Notice of Hearing, March 18, 2008, with certified mail return receipt from item addressed to the Respondent |
| Fin. Reg. Ex. # 2 | Notice of Hearing, March 28, 2008, with certified mail return receipt from item addressed to the Respondent's attorney |
| Fin. Reg. Ex. # 3 | CFR licensing printout for the Respondent, June 13, 2008 |
| Fin. Reg. Ex. # 4 | Special Examination Examiner's Findings, March 31, 2007 |
| Fin. Reg. Ex. # 5 | Settlement Agreement and Refund Schedule, June 22, 2007 |
| Fin. Reg. Ex. # 6 | Affidavits of eight customers entitled to refunds, various dates |
| Fin. Reg. Ex. # 7 | Letter from the CFR to the Respondent, November 29, 2007 |

The Respondent was not present and so did not submit any exhibits.

Testimony

The CFR presented the testimony of Calvin I. Wink, Jr., a certified mortgage investigator/examiner with the CFR. The Respondent was not present and so did not testify or present any witnesses.

FINDINGS OF FACT

Having considered all of the evidence presented, I find the following facts by a preponderance of the evidence:

1. The Respondent is a limited liability company licensed under Maryland's Mortgage Lender Law under license number 06-15838. The license was originally issued on October 3, 2006, and is due to expire on October 3, 2008. (Fin. Reg. Ex. #3).
2. Corey Leonard is the owner of the Respondent and the Respondent's contact person with the CFR.
3. In early 2007, as a result of a complaint of unlicensed activity, the Compliance Unit of the CFR conducted a special examination of the Respondent's mortgage lending business. This examination revealed numerous significant violations of state and federal statutes and regulations governing the mortgage lending business.
4. The findings of the special examination were described in a "notice of examination/investigation findings," issued on March 31, 2007. The CFR sent this notice to the Respondent, requesting a written response within 30 days of receipt of the notice. (Fin. Reg. Ex. #4).
5. The Respondent, which was represented by counsel, did not dispute the findings of the special examination.

6. On June 22, 2007, the Respondent entered into a Settlement Agreement (Agreement) with the CFR. (Fin. Reg. Ex. #5). The Agreement was executed at the CFR's offices. Corey Leonard and the Respondent's counsel were present. Mr. Leonard signed the Agreement as Owner of the Respondent.

7. The Agreement required the Respondent to pay the CFR a civil fine in the amount of \$1,500.00 upon execution of the Agreement, and to pay refunds totaling \$30,988.81 in twelve monthly installments to ten specifically identified individuals.

8. The Agreement also required Mr. Leonard to complete a forty-hour loan originator pre-license training class at an approved training location by August 31, 2007.

9. The Respondent paid the \$1,500.00 civil fine a few days after the execution of the Agreement.

10. Mr. Leonard never completed the loan originator pre-license training class.

11. The Respondent made none of the required refund payments to the specifically identified individuals.

12. The CFR made several fruitless attempts to contact Mr. Leonard by telephone. The Respondent is no longer represented by counsel.

13. On November 29, 2007, the CFR wrote to Mr. Leonard advising that charges would be filed. (Fin. Reg. Ex. #7). Neither Mr. Leonard nor anyone else purporting to represent the Respondent has contacted the CFR.

14. The Respondent continues to operate as a mortgage lending business in Annapolis, Maryland.

DISCUSSION

The Respondent's failure to appear.

This matter was scheduled for a hearing on June 17, 2008. The parties were notified of the hearing date by Notices of Hearing dated March 18 and March 28, 2008.¹ The notices were sent to all parties by regular and certified mail to their addresses of record. (Fin. Reg. Ex. #1 and #2.) The certified mail receipt for the Respondent's notice establishes that the Respondent received the certified mail at the Respondent's mailing address in Annapolis on March 21, 2008. Fin. Reg. Ex. #1.

Although the Respondent received notice of the hearing, no one purporting or authorized to represent the Respondent appeared for the hearing on June 17, 2008.² There had been no request for a postponement on behalf of the Respondent. Therefore, I find that the Respondent was properly notified of the hearing and failed to appear. Accordingly, the hearing proceeded in the Respondent's absence. COMAR 09.01.02.09.

The merits of the case.

The CFR alleges that the Respondent violated § 11-517 of the Financial Institutions Article, and is seeking revocation of the Respondent's Mortgage Lender license. The CFR bears the burden of proof in this case by a preponderance of the evidence. Md. Code Ann., State Gov't Art., § 10-217 (2004); *see also Comm'r of Labor and Indus. v. Bethlehem Steel Corp.*, 344 Md. 17, 34 (1996).

The CFR proceeded solely under section 11-517 (a)(50) of the Financial Institutions Article, which provides, in relevant part:

¹ The second notice was to correct the address for Michael Fried, Esq., who had represented the Respondent in 2007.

² Mr. Wink testified that he had contacted Mr. Fried and learned that Mr. Fried no longer represents the Respondent.

(a) Subject to the hearing provisions of § 11-518 of this subtitle, the Commissioner may suspend or revoke the license of any licensee if the licensee or any owner, director, officer, member, partner, stockholder, employee, or agent of the licensee:

(5) Otherwise demonstrates unworthiness, bad faith, dishonesty, or any other quality that indicates that the business of the licensee has not been or will not be conducted honestly, fairly, equitably, and efficiently.

Md. Code Ann., Fin. Inst. § 11-517 (a)(5) (Supp. 2007).

The proof offered at the hearing showed that the Respondent, with the benefit of counsel, entered into a Settlement Agreement with the CFR in June 2007. That Agreement was intended to resolve the violations of Maryland and federal law that had been discovered in the special examination conducted by the Compliance Unit of the CFR. There is no dispute that the only requirement of the Agreement that the Respondent performed was the payment of a \$1,500.00 civil fine.

As to the other requirements of the Agreement, Mr. Wink testified that there is no evidence that Mr. Leonard, the Respondent's owner, completed the loan originator pre-license training class by August 31, 2007, or at any time thereafter. Mr. Wink also testified that he spoke to the majority of the ten specifically identified individual consumers who were to receive refund payments. Eight of these consumers submitted Affidavits stating that they had not been paid. (Fin. Reg. Ex. #6.) Thus, as to these eight, there is affirmative evidence of non-payment.

As to the two consumers who did not respond, a reasonable inference is that they were not paid either. There is no documentation in the CFR's files of any payments. Mr. Wink further testified that neither Mr. Leonard nor anyone else on behalf of the Respondent ever told the CFR that any payments had been made. Mr. Wink tried to reach Mr. Leonard on his cell

phone but Mr. Leonard would hang up on him or not answer the calls. I find that the Respondent did not make any refund payments to consumers.³

Finally, the CFR's Director of Enforcement wrote to Mr. Leonard on November 29, 2007, advising that due to lack of a response from Mr. Leonard and/or the Respondent, charges would be filed. (Fin. Reg. Ex. #7.) Mr. Wink made no further attempts to reach Mr. Leonard. Mr. Leonard has not contacted the CFR since November 29, 2007, but Mr. Wink confirmed that the Respondent, doing business as Axios Financial, is still operating as a mortgage lender in Annapolis, Maryland.

The CFR argued that the Respondent willfully failed to comply with the Agreement, which was itself intended to resolve numerous violations of state and federal law. Although, by virtue of the compromise by the CFR, the monthly payments due to each consumer were relatively small (*see* Fin. Reg. Ex. #5), the Respondent made no effort whatsoever to make any payments. Mr. Leonard did not appear for this hearing; yet the Respondent continues to do business in the face of its non-compliance with the Agreement.

I agree with the CFR that all of these elements demonstrate bad faith and dishonesty, and indicate "that the business of the licensee has not been or will not be conducted honestly, fairly, equitably, and efficiently." Md. Code Ann., Fin. Inst. § 11-517 (a)(5) (Supp. 2007). The CFR is seeking revocation of the Respondent's Mortgage Lender's license.

The statute sets forth factors to be considered by the Commissioner when determining whether a license should be suspended or revoked in the event of a conviction. It also sets forth factors to be considered in the event the CFR is seeking a financial penalty. There is no statutory

³ Mr. Wink testified that the \$30,988.81 specified in the Agreement represented approximately a 50% compromise by the CFR of the amounts originally due.

guidance, however, when there is a finding that the "business of the licensee has not been or will not be conducted honestly, fairly, equitably, and efficiently." Md. Code Ann. §11-517 (a)(5) (Supp. 2007). On this record, however, I can discern no mitigating circumstance that would suggest that any sanction less than revocation is appropriate.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the Respondent violated section 11-517(a)(5) of the Financial Institutions Article. I further conclude that the Respondent's actions in (1) failing to comply with the terms of the Settlement Agreement of June 22, 2007, (2) ignoring the CFR's efforts to communicate with Mr. Leonard, and (3) continuing to operate as a Mortgage Lender after knowingly failing to comply with the Agreement warrant revocation of the Respondent's Mortgage Lender's license.

ORDER

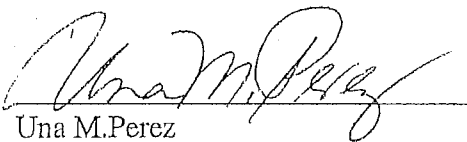
I **RECOMMEND** that the CFR:

ORDER that the Respondent violated section 11-517(a)(5) of the Financial Institutions Article;

ORDER that the Respondent's Mortgage Lender's License be revoked; and

ORDER that the records and publications of the CFR reflect this decision.

August 6, 2008
Date Decision Mailed


Una M. Perez
Administrative Law Judge

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